LEGAL PROCEDURE IN ENGLAND

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In reviewing the administration of justice in any country, the most important thing to consider perhaps is the character of the judiciary. This is especially true of England, where the judges take a far more active part than they do in America in the trial of causes, and where they are far more outspoken in their comments on the evidence. The contrast between the manner of choosing judges in the two countries is very striking. The judges in England are appointed to serve during good behavior; they are paid adequate salaries, and upon retirement are provided with substantial pensions. The lord high chancellor receives an annual compensation of £10,000; the lord chief justice £8,000; the members of the high court of justice £5,000; the county court judges £1,500; and the magistrates of the Metropolitan (London) police courts as a rule £1,500. Justices of the peace serve without pay; they deal with minor cases, usually of a criminal nature, although they have a limited civil jurisdiction. In criminal prosecutions, where a grave offense is charged, and the justices are convinced of the probable guilt of the accused, it is their duty to bind him over for trial at the assizes. Political considerations, broadly speaking, have no weight in English judicial appointments, although in the case of men of equal merit the party in power would naturally be inclined to appoint a judge of its own political faith. An exception to the general rule is to be found in the case of the lord high chancellor, who retires from office with his party. His duties, however, are not purely judicial, as he presides over the deliberations of the House of Lords. It may be taken for granted when an English barrister becomes a high court judge that he previously held a prominent position at the bar, and had shown his probable fitness for the bench.

A foreigner who studies the English judicial system is very strongly impressed with the few courts in England in comparison with the great number in America. In Liverpool, for example—a city with a population of about 750,000—all the important cases

are tried at the assizes, which are held four times during the year. The sessions usually last from two to four weeks, and three judges are ordinarily in attendance. The judges upon circuit—and this is true generally—try civil and criminal cases indifferently. If the criminal docket is large at a particular assize, one judge will probably be designated to try the criminal causes. At the next assize he might sit only in the trial of civil actions. Under such an arrangement, a judge is less apt to have predispositions and prejudices than if his whole time were devoted to the hearing of a special class of causes. Listening from day to day to nothing but recitals of crime may often so harden the sympathies of a judge, and so blunt his power of discrimination, that he may impose sentences of undue severity, or look upon all who come before him as guilty, notwithstanding the presumption of innocence in their favor. He loses the quality of open-mindedness, and ceases therefore to be impartial in his judgments.

English judges, by reason of their life tenure of office, are not affected by fluctuations of public opinion. They realize they have but one duty to perform, and that is to administer the law as they understand it without regard to consequences. They resemble very closely, except in the adequacy of their compensation and the significance of their pensions, the federal judges in America. They control, or influence, or direct—whichever word may seem the most appropriate—the verdict of a jury to a far greater extent than do the judges of the state courts in America. A lawyer can experience no greater pleasure than to listen to the summing-up by an English judge of an important case. He calls the attention of the jurors to discrepancies in the testimony, emphasizes the importance of certain facts, endeavors to sift what is essential from what is immaterial, asks without passion or prejudice if a certain line of conduct is consistent with the contention of counsel, and after a full statement of the law reminds the jury that they are the sole judges of the facts, but that they must accept the law as delivered from the bench.

A distinguishing feature of legal procedure in England is the decision of a case upon its substantial merits, with a complete disregard of technicalities. In a criminal trial, for illustration, the important thing in England is to prove the commission of the offense rather than the precise manner of its perpetration. After the nisi

prius court has rendered judgment in a civil action, and either party feels aggrieved, an appeal may be taken. This is done without filing a motion for a new trial, and neither is a bill of exceptions nor printed briefs submitted. The appellate judges almost invariably decide a case immediately after the arguments have been heard. They have the power to modify the judgment by increasing or reducing the amount of the damages assessed. They may amend the pleadings, hear additional evidence, and make any order which in their opinion should have been made in the court below. They have the right to grant what may be called a partial new trial, covering only such question or questions concerning which it is thought there was a miscarriage of justice at the original trial, but without in anywise affecting the decision of the nisi prius court on any other question. Only about 10 per cent of the cases which are appealed against are reversed and sent back for further hearing. It will thus be seen that everything connected with the administration of justice in England has in view the expeditious trial and disposal of cases, so that litigants may not be worn out by protracted delays. Postponements are seldom if ever granted simply to meet the convenience of counsel, and ordinarily a case is tried, approximately at least, upon the date set for hearing. If a postponement is requested the costs—and they are usually substantial—must be defrayed by the party making the application.

A statute passed in 1851 (14 and 15, Vict. c. 100) indicates how thoroughly legal procedure has been simplified in the trial of criminal cases. The statute provides:

> From and after the coming of this act into operation, whenever, on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town, corporate, parish, township, or place mentioned or described in any such indictment; or in the name or description of any person or persons or body politic or corporate therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offense charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense; or in the christian name or surname or both christian name and surname, or other description whatsoever of any person or persons whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or

described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment to be amended according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred.

No indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record" or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or vice versa, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of by his proper name, nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offense.

Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person; and thereupon the trial shall proceed as if no such defect had appeared.

It was only as recently as 1907 that a court of criminal appeal was created in England. Prior to that time, all criminal appeals were passed upon by the home secretary. The criminal appellate court is composed of the lord chief justice and eight judges of the king's bench division of the high court, appointed for the purpose by the lord chief justice, with the consent of the lord chancellor. Three judges, however, constitute, a quorum, and this is the number

usually sitting. The judgment of the majority prevails. The decision of this court is final, except where "upon the suggestion of the director of public prosecutions or the prosecutor or the defendant the attorney general certifies that the decision of the court of criminal appeal involves a point of exceptional public importance and it is desirable for the public interest that a further appeal should be brought." In such a case an appeal may be made to the House of Lords. If an appeal is taken in a criminal case, the court may either increase or diminish the sentence which has been imposed. The court has also the power "where an applicant has been convicted of an offense, and the jury could on the indictment have found him guilty of some other offense, and on the finding of the jury it appears to the court of criminal appeal that the jury must have been satisfied of facts which proved him guilty of that other offense, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offense, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offense, not being a sentence of greater severity." The fact that the criminal court of appeal may increase the sentence acts naturally as a deterrent in many instances, and tends to restrict the appeals to cases where counsel are satisfied that there is substantial merit in their position. Upon the appeal, witnesses may be called and examined who appeared in the nisi prius court, and witnesses may also be examined who could have been required to testify in the first instance but did not do so, and, further than this, competent witnesses may be heard, including the defendant himself, who could not have been required to testify upon the original trial. The court upon deciding against the appellant may order that the sentence shall run from the time of the appeal instead of from the date of conviction. The criminal appellate court has, however, no authority to grant a new trial, and, if it is satisfied that the appeal is well laid must quash the conviction and allow the defendant to go free. There has been much criticism of the inability of the appellate court to grant a new trial, and the lord chief justice and many other justices have declared that the power to do so should be vested in the appellate court. Judgment is rendered usually at the conclusion of the hearing of the appeal, but if there is an important point of law to be considered, the court may reserve its opinion for a few days and then deliver it in writing.

The rapidity with which cases are tried in England has attracted the attention and elicited the admiration of other countries. In a table which appears in a report of the special committee of the American Institute of Criminal Law and Criminology appointed to investigate the criminal procedure in England, it is shown, with reference to twelve cases heard at the central criminal court, London, that the ordinary time of trial—and this would include the impanelling of the jury, the statements of counsel, the examination of witnesses, the charge of the judge, and the verdict of the jury—was about two and one-half hours. These cases covered charges of murder, rape, arson, receiving stolen goods, and shooting with intent to murder. A verdict of guilty was returned in seven cases, a verdict of not guilty in two, and a verdict of guilty but insane in three cases. In four other cases referred to in the report, three required two days to try, and one—a case of criminal libel—eight days. It is interesting to note in these cases the time that elapsed between the date of the arrest and the date of trial, which was as follows:

Arrest	Date of Trial
May 4	June 3
May 16	June 4
May 7	June 6
April 27	June 7
May 9	June 10
May 2	June 10
April 18	June 4
May 3	June 4
May 27	June 29
June 1	June 29
June 4	July 1
July 8	July 19
July 5	July 10
July 16	July 19
June 27	July 20
March 4	June 8

The last mentioned case was the one in which criminal libel was charged.

The public prosecutor in England strives simply to discover the truth. He will in this quest even bring out facts favorable to the defendant if they are within his knowledge. His reputation at the bar fortunately does not depend upon the number of convictions he may be able to secure. No time is practically consumed in England

in the examination of jurors, as the ordinary practice is for counsel to discuss their objections with each other before the trial. If an objection has substance, it is almost always recognized in the interchange of views, and the name of the person is struck from the panel. The jury in a criminal case simply pass upon the question of guilt or innocence. If a verdict of guilty is returned, the sentence is imposed by the judge after he has been informed by a police officer of the history of the accused, and especially of any previous convictions. The trial of cases is greatly facilitated in England by the fact that few objections are made to the admission of testimony, and when made they are stated with the greatest possible brevity. The judge indeed usually passes upon an objection without hearing from counsel. If a barrister is inclined to be rhetorical, or to wander away from a discussion of the facts of the case, the judge will probably bring him down to earth by informing him that if he has nothing further to say it would be desirable for him to conclude his remarks. The impassioned appeal is seldom heard in an English court, even in the trial of criminal cases. It would have little influence upon the English juror, and would be very apt indeed to prejudice and alienate him.

It is not an exaggeration, I think, to say that cases are tried in England in less time ordinarily than it takes in America to impanel a jury. English newspapers are not permitted to comment upon the evidence during the progress of a trial, or even in advance of the hearing to do more than mention the bare circumstances of the commission of the crime. An atmosphere is not created, therefore, before the trial, either favorable or prejudicial to the plaintiff or the defendant in a civil action, or to the Crown or the accused in a criminal case, and a person who is called to serve upon a jury cannot have formed an opinion of the merits of the case from the perusal of his favorite newspaper. England, with a population according to the last census of over 30,000,000, has only eighteen high court judges. While there is a periodical demand for the creation of more judges, I am satisfied that in no country are cases tried with greater despatch than in England, and that nowhere are the demands of justice more adequately and admirably fulfilled.

In order that legal procedure in America may more closely correspond with that of England, the judges must be appointed to serve during good behavior, or if elected chosen for very long terms;

largely increased salaries must be paid; they must be freed from all political influences; in criminal as well as in civil cases, they alone should interpret and declare the law, and juries should not be permitted to substitute their own interpretation; newspapers must be restricted to a brief recital of the facts connected with the commission of an alleged offense; technicalities must be brushed aside in the trial of a cause, and no case should be reversed unless the appellate court is satisfied that substantial injustice has been done; postponements should only be grudgingly granted, and never merely to suit the convenience or comfort of counsel; arguments of counsel should be limited as to time, and during that time they should be compelled by the judge to confine their remarks to an unemotional and unrhetorical discussion of the facts of the case.